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Dmt
12-4-02

Docket No. AN 2002.00

Certificate of Mailing/Transmission (37 C.F.R. § 1.8(a)):

[] Pursuant to 37 C.F.R. § 1.8, I hereby certify that this paper and all enclosures are being deposited with the United States Postal Service as first class mail on the date indicated below in an envelope addressed to the Assistant Commissioner for Patents, Washington D.C. 20231.

[X] Pursuant to 37 C.F.R. § 1.6(d), I hereby certify that this paper and all enclosures are being sent via facsimile on the date indicated below to the attention of Examiner Susan D. Coe at Facsimile No. (703) 305-3014.

Dated: NOV. 18, 2002 Name of Person Certifying:

Printed Name: Mary R. Zimmerman

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kin-Ping WONG

Assignee: Wackvom Limited

Filing Date: December 12, 2001

Examiner: Coe, Susan D.

Serial No.: 10/016,977

Group Art Unit: 1642

Title: COMPOSITIONS CONTAINING AN ACTIVE FRACTION ISOLATED FROM SCUTELLARIAE BARBATAE AND METHODS OF USE

Commissioner for Patents
Washington, D.C. 20231

**PETITION FOR A ONE MONTH EXTENSION OF TIME AND
RESPONSE TO RESTRICTION REQUIREMENT UNDER 35 U.S.C. § 121**

Dear Sir:

On September 18, 2002, a Requirement for Restriction under 35 U.S.C. § 121 was issued by the U.S. Patent and Trademark Office in connection with the above-identified application. A response to the Requirement for Restriction originally was due October 18, 2002. Applicant's undersigned attorney petitions for a One Month Extension of Time, and authorizes to pay the fee due to the undersigned's Deposit Account. In view of the filing of this Petition and payment of the fee, a response is now due November 18, 2002. Accordingly this response is timely filed.

Requirement For Restriction Under 35 U.S.C. § 121

Claims 1 to 21 are pending in the subject application. In the restriction issued September 18, 2002, the pending claims were alleged to describe the following independent and distinct inventions:

- I. Claims 1-6 and 19-21, drawn to a process for making an extract, the extract made, and a kit containing the extract, classified in class 424, subclass 741; and
- II. Claims 7, 11, 12, 17, and 18; drawn to a method for inhibiting growth of endothelial cells, classified in class 424, subclass 741; and
- III. Claims 8, 11-14, 17, and 18, drawn to a method for inhibiting vascularization of tissue, classified in class 424, subclass 741; and
- IV. Claims 9, 10, 17, and 18, drawn to a method for treating a disorder, classified in class 424, subclass 741; and
- V. Claims 15 and 16, drawn to a method for screening for a therapeutic agent, classified in class 424, subclass 741.

Traversal of Requirement for Restriction

In response to the requirement for restriction, Applicant elects, with traverse to prosecute the invention of Group I, claims 1 to 6 and 19-21. However, Applicant expressly reserves his right under 35 U.S.C. § 121 to file one or more divisional applications directed to the non-elected subject matter during the pendency of this application, or an application claiming the benefit of this application under 35 U.S.C. § 120.

Applicant also respectfully traverses the grounds for restriction. There are two criteria for a proper requirement for restriction, namely, (1) the inventions must be independent or distinct, and (2) there must be a serious burden on the Examiner if restriction is not required. Under M.P.E.P. § 808, the Examiner must examine the subject application on the merits even though it includes claims to distinct inventions, if the search and examination of the application can be made without serious burden.

The Examiner indicated that the invention of Group I is related to inventions of Groups II to V as product and process of use. The Office alleged that however, the inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with a materially different product or (2) the product as claimed can be used in a materially different process of using that product. The Office alleged that the composition can be used to improve blood circulation. Applicant traverses on the ground that all uses of the product are related to its inherent therapeutic activity. Accordingly, the product can not be used in a "materially different process" as improving blood circulation is related to the recited characteristics.

Applicant further maintains that restriction among claims claims 1 to 21 is improper because (1) it would not be a serious burden on the Examiner to search and examine the inventions of Groups I to V because each is related to the composition and its therapeutic uses. Pursuant to MPEP § 802.1, "independent (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation or effect . . ." Clearly, there is a disclosed relationship between the compositions of Group I and the methods of Groups II through V.

Applicant further notes that it would not be a serious burden on the Examiner to search the inventions of Groups I through V together as each invention is classified within the same class, i.e., class 424.

Election of Species

The Office also requested an election of species. Applicant elects with traverse to have the claims examined as they read on cancer. Dependent claims 10 and 21 read on this election.

CONCLUSION

No fee, other than the fee for the One Month Extension of Time is deemed necessary in connection with the filing of this Response. However, if the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or

other fees due in connection with the filing of this document to **Deposit Account No. 50-1189**, referencing billing no. 23888-7008. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Should a telephone advance prosecution of the subject application, the Examiner is invited to contact the undersigned at (650) 849-4950.

DATE: Nov. 18, 2002

Respectfully submitted,

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